



W.P.(MD)Nos.12215 and 18698 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2024

PRONOUNCED ON : 30.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)Nos.12215 and 18698 of 2023
and
W.M.P.(MD)Nos.10453, 10455, 10456 and 15517 of 2024**

W.P.(MD)No.12215 of 2023:-

N.A.Ramachanda Raja

... Petitioner

VS

**1.Union of India represented by
The Principal Secretary,
Ministry of Road Transport and Highways,
Union of India,
Transport Bhawan, Parliament Street,
New Delhi – 110 001.**

**2.Union of India represented by
The Director,
Impact Assessment Division,
Ministry of Environment Forest and Climate Change,
India Parayavaram Bhawan,
3rd Floor, Vayu Wing, Jor Bagh Road,
Aliganj, New Delhi – 110 003.**

**3.The State of Tamil Nadu represented by
1/42**



W.P.(MD)Nos.12215 and 18698 of 2023

The Principal Secretary,
Highways and Minor Ports (HS2) Department,
State of Tamil Nadu,
Fort St.George, Chennai – 600 009.

4.The Commissioner,
Commissionerate of Land Administration,
2nd Floor, Ezhilagam,
Chepauk, Chennai – 600 005.

5.The Director General,
Highways Department,
Integrated Chief Engineers Office,
76 Sardar Patel Road,
Guindy, Chennai – 600 025.

6.The Chief Engineer (Highway Project),
Integrated Chief Engineers Office,
76 Sardar Patel Road,
Guindy, Chennai – 600 025.

7.The District Collector,
Office of the District Collector,
Virudhunagar District- 626 002.

8.The Divisional Engineer (Highways Project),
Office of the Divisional Engineer (Highways Project),
Perumalpuram, Tirunelveli – 627 007.

9.The District Revenue Officer,
Office of the District Revenue Officer,
Virudhunagar District,
Collectorate, Sattur Road,
Virudhunagar District- 625 002.

10.The Special District Revenue Officer
/Land Acquisition Officer,
2/42



W.P.(MD)Nos.12215 and 18698 of 2023

Office of the Special District Revenue Officer,
Tamil Nadu Road Sector Project -II,
Corporation over water tank complex,
Dindigul Road (KPN Parcel opposite),
Tiruchirappalli.

11.The Commissioner,
Office of the Commissioner,
Rajapalayam Municipality,
Virudhunagar District.

12.The Tahsildar,
Office of the Tahsildar,
Rajapalayam Taluk, Virudhunagar District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order issued by the respondent No. 3 in G.O.(Ms).No.62, dated 02.05.2022 and to quash the same as illegal, consequently to direct the respondents to expedite the formation of ongoing link road in Rajapalayam Municipality related to 60 feet road from Chathirapatti road Jeya Anand Theatre (West) towards Angel School and ends at Tenkasi Road KSR petrol pump on the basis of public notice issued by the respondent No.11, in Na.Ka.No.F1/6063/2022, dated 17.02.2023 in accordance with law within the time stipulated by this Court.



W.P.(MD)Nos.12215 and 18698 of 2023

For Petitioner	: Mr.T.Lajapathi Roy Senior Counsel for Mr.R.Alagumani
For R1 and R2	:Mr.K.Govindarajan Deputy Solicitor General of India
For R3 to R10	:Mr.Veerakathiravan Additional Advocate General assisted by Mr.P.Thilak Kumar Government Pleader
For R11	:Mr.N.Dilip Kumar

W.P.(MD)No.18698 of 2023:-

PAS Krishnamma Rajha

... Petitioner

vs

1.The State of Tamil Nadu,
Rep. by Secretary to the Government,
Housing and Urban Development Department,
Fort St. George, Chennai-600009.

2.The Highways and Minor Ports (HS2) Department,
Government of Tamilnadu,
Rep. by its Secretary,
Fort St. George, Chennai-600009.

3.The Chief Engineer (H) Projects,
3rd Floor, Integrated CEs Office Building,
76, Sardar Patel Road,
Guindy, Chennai-600 025.

4.Special District Revenue Officer / Land Acquisition Officer,
Tamilnadu Roads Development Project-II,
Highways Department,
Government of Tamilnadu,
Trichirapalli.



W.P.(MD)Nos.12215 and 18698 of 2023

- 5.Seenithai
- 6.Subramaniam
- 7.Radha Krishna Raja
- 8.Indira
- 9.Kavitha
- 10.Karpagam
- 11.Ramachandran
- 12.Sathiyammal
- 13.V.Haridhrra
- 14.R.Rohini
- 15.A.Ramkumar
- 16.N.Lingammal
- 17.R.Indira
- 18.R.Dhanam
- 19.S.Ramasubbu
- 20.P.A.Subramanian
- S/o.Iyanar Raja
- 21.R.Vijayalakshmi
- 22.M.Seethalakshmi
- 23.R.Ponmani
- 24.K.Saraswathi
- 25.Dharmalingaraja
- 26.G.Sakthi
- 27.R.Premsayee
- 28.K.Ponnambalam
- 29.M.Sivaraman
- 30.R.Ramsubramaniam
- 31.R.Ponnammal
- 32.V.Gomathiammal
- 33.P.A.Subramanian
- S/o.Angaiyar Raja
- 34.A.Jayalakshmi
- 35.N.Karthickkumar
- 36.J.Anandham

...Respondents

(R5 to R36 were impleaded vide orders of this Court, dated 02.04.2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,



W.P.(MD)Nos.12215 and 18698 of 2023

to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent culminating in the Notification dated 13.02.2023 bearing No.LA-VI (2)/030289/2023 issued under section 15(1) of the Tamil Nadu Highways Act, 1997, and to quash the same and to direct the 2nd respondent to obtain environmental clearance under the EIA Notification, 2006 for its proposed construction of its State Highways link road between Rajapalayam-Sankarankoil-Tirunelveli - Kollam Road (NH 744-Rajapalayam Government Hospital) in Virudhunagar District.

For Petitioner	: Mr.Yogeshwaran
For R1 to R4	: Mr.Veerakathiravan Additional Advocate General assisted by Mr.P.Thilak Kumar Government Pleader
For R5	:Mr.S.Ramasamy
For R6	:Mr.K.Muthu Ganesa Pandian
For R9, R10 and R12	:No appearance
For R13 to R36	:Mr.K.Sivabalan

COMMON ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

Since the issues involved in both the Writ Petitions filed as Public Interest Litigation are common, which is in respect of formation of a link road, both the Writ Petitions are heard together and disposed of with this



W.P.(MD)Nos.12215 and 18698 of 2023

common order.

WEB COPY

2.The brief facts involved in the Writ Petitions is that the State Government issued G.O.(Ms)No.171, Highways and Minor Ports (HS2) Department, dated 16.10.2018, whereby, administrative sanction was accorded for a detailed project work for the formation of link road between Rajapalayam-Sankarankovil-Tirunelveli (State Highways-SH-41-Rajapalayam New Bus Stand) to Tirumangalam-Kollam Road (National Highway-NH-744-Rajapalayam Government Hospital) in Virudhunagar District. Pursuant to the detailed project report submitted, the Government vide G.O.(Ms)No.62, Highways and Minor Ports (HS2) Department, dated 02.05.2022 accorded administrative and financial sanction for land acquisition for the work of the above project, ie., formation of link road. Proceedings were initiated for acquiring lands and a notification under Section 15(2) of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as “the Act”), was published on 29.09.2022 in the daily newspapers and after conducting a public hearing on 01.11.2022, notification under Section 15(1) of the Act was published on 13.02.2023. Public hearing, as per Section 19(2) of the Act, was conducted on 17.03.2023 and further public



W.P.(MD)Nos.12215 and 18698 of 2023

hearing under Section 19(5) of the Act was also conducted on 12.05.2023, pursuant to which, draft award valuation was prepared and has also been approved by the District Collector, Virudhunagar, on 14.06.2023. The land acquisition process got completed and disbursement of compensation had started and out of the lands situated in 73 survey numbers, compensation had already been paid to the land owners situated in 40 survey numbers and at this stage, the above Writ Petitions have been filed against the implementation of link road project.

3.Heard Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the petitioner in W.P.(MD)No.12215 of 2023, Mr.Yogeshwaran, learned Counsel for the Petitioner in W.P.(MD)No.18698 of 2023, Mr.K.Govindarajan, learned Deputy Solicitor General of India appearing for the respondents 1 and 2 in W.P.(MD)No.12215 of 2023, Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.P.Thilak Kumar, learned Government Pleader, appearing for the respondents 3 to 10 in W.P.(MD)No.12215 of 2023 and for the respondents 1 to 4 in W.P.(MD)No.18698 of 2023, Mr.N.Dilip Kumar, learned Counsel appearing for the respondent No.11 in W.P.(MD)No.12215 of 2023,

8/42



W.P.(MD)Nos.12215 and 18698 of 2023

Mr.S.Ramasamy, learned Counsel for the fifth respondent, Mr.K.Muthu Ganesa Pandian, learned Counsel for the sixth respondent and Mr.K.Sivabalan, learned Counsel for respondents 13 to 36 in W.P.(MD)No. 18698 of 2023

4.The petitioner in W.P.(MD)No.18698 of 2023 mainly challenges the notification issued under Section 15(1) of the Act, dated 13.02.2023, on the ground that since no prior environmental clearance was obtained, which is mandated under Clause 7(f) of the EIA Notification, 2006, the notification issued for the project is un-sustainable, as the environmental impact of the proposed project is to be assessed and considered before the lands are acquired. The impugned notification issued by the official respondents under Section 15(1) of the Act is therefore, not in consonance with EIA Notification, 2006, and is also against the dictum laid by the Hon'ble Supreme Court.

5.Further, Rajapalayam is a town situated in south-western part of the State, which is a largest Municipality in Virudhunagar District. Since the



W.P.(MD)Nos.12215 and 18698 of 2023

Rajapalayam town is situated near the Western Ghats and has many important water resources and rivers and also lands are wet lands used for farming, the environment impact assessment is all the more necessary. Further, master plan for Rajapalayam Municipality has been prepared in compliance of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred as “TCP Act”) and a draft master plan has been prepared and is under the consideration of the Government for approval and the proposed project does not form part of the road network in the proposed master plan and therefore, the notification issued for the project is arbitrary and cannot be proceeded.

6.Mr.Yogeshwaran, learned Counsel appearing for the petitioner argued that since Clause-7(f) of EIA Notification, 2006, mandates for obtaining prior environmental clearance for any new State highway and the proposed road project for which, the notification under Section 15(1) of the Act had been issued without complying the mandatory requirement, is illegal. The learned Counsel further contended that since the proposed project is a highway falling within the definition of Section 2(12) of the Act, it is automatically a new State Highway, which falls under category(4) of 10/42



Clause 7(f) of EIA Notification, 2006 and therefore, cannot be proceeded further, as it is *per se* illegal and violative of EIA Notification, 2006. The learned Counsel further contended that there are several water bodies situated in the area, where the proposed project is sought to be implemented and further, when a comprehensive master plan has been finalised for the Rajapalayam Municipality, where the proposed project does not form part of the road project in the master plan, the proceedings initiated and the notification issued without obtaining necessary clearance under the TCP Act also are not sustainable.

7.Relying on the decisions of the Hon'ble Supreme Court (1) ***Karnataka Industrial Areas Development Board vs Kenchappa and others***, reported in (2006) 6 SCC 371 and (2)***Project Director vs P.V.Krishnamoorthy and others*** reported in (2021) 3 SCC 572 and the decision of this Court in ***M.Velu vs State of Tamil Nadu and others*** reported in 2010 SCC OnLine Mad 2736, the learned Counsel contended that before issuing a notification for any project, the authorities has to mandatorily obtain prior environmental clearance for the project by approaching the Environmental Impact Assessment Authorities.



W.P.(MD)Nos.12215 and 18698 of 2023

WEB COPY

8.The main ground of challenge by the petitioner in W.P.(MD)No. 12215 of 2023, is that formation of link road will not serve any purpose, as there is already an existing link road, namely, PACR Salai linking SH-41 and NH-744 and the implementation of the proposed project by acquiring lands near three water bodies will be detrimental to the ecology and would be against the principle of sustainable development and therefore, violative of Articles 19, 47, 48A and 51A of the Constitution of India. Further, the Housing and Urban Development [UD4(2)] Department had issued G.O. (Ms)No.168, dated 20.11.2014, and notified Rajapalayam Municipality under the local planning area, as conferred under Section 10(4) of the TCP Act, and based on the notification, a master plan has been prepared including the proposed link road and while so, the present project of another link road initiated by the official respondents will serve no purpose and therefore, sought for direction to the official respondents to expedite the formation of the earlier ongoing link road.

9.Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the



W.P.(MD)Nos.12215 and 18698 of 2023

petitioner argued that when once the master plan is prepared and a declaration of the local planning area under Section 10 of the TCP Act has been issued, the plan submitted to the Government is the master plan under Section 17 of the Act and the master plan propose or provide for all or any of the matters including the major road and street improvements. The learned Senior Counsel further contended that when the final master plan has been approved by the Government in G.O.Ms.No.21, Housing and Urban Development [UD4(2)] Department, 30.01.2024 and published in Government Gazette No.26, dated 30.01.2024, any person intending to carry out any development on any land or in an area, other than planning area, shall make an application in writing to the local authority and prior concurrence has to be obtained and further, as per Section 47-A(2) of the TCP Act, in case of wet lands, prior concurrence of the District Collector concerned is also necessary. The learned Senior Counsel by referring to the explanation provided therein, where the term “*wet land*” in the Section shall have the same meaning as in the Tamil Nadu Additional Assessment and Additional Water Cess Act, 1963 (Tamil Nadu Act 8 of 1963), contended that since no approval, as contemplated, has been obtained, the proposed project cannot be proceeded further, as the mandatory requirement under the TCP Act has not been complied with. The learned Senior Counsel also

13/42



contended that the proposed project is a new State Highway, which requires obtaining of prior environmental clearance as per EIA Notification, 2006 and therefore, any implementation of the project without having a proper environmental impact assessment will be disastrous to the ecology and therefore, cannot be allowed to proceed further.

10.The learned Senior Counsel by relying on the judgment of the Hon'ble Supreme Court in ***Hanuman Laxman Aroskar vs Union of India*** reported in ***(2019) 15 SCC 401***, contended that as held by the Hon'ble Supreme Court, EIA Notification, 2006 has to be strictly complied with, which attempts to bridge the perceived gap between the environment and development. The learned Senior Counsel also by relying on the judgment of ***Madhya Pradesh High Court Advocate Bar Association and another vs Union of India and another*** reported 2022 LiveLaw (SC) 495, contended that the National Green Tribunal under Sections 15 and 22 of the NGT Act does not oust the High Court's jurisdiction under Articles 226 and 227 of the Constitution of India, as the same is a part of the basic structure of the Constitution and therefore, the Writ Petition filed without approaching the National Green Tribunal is maintainable.



W.P.(MD)Nos.12215 and 18698 of 2023

WEB COPY

11.Mr.Veerakathiran, learned Additional Advocate General appearing for the State argued that only considering the importance and necessity of the link road between the existing State Highway-SH-41 and the National Highway-NH-744, as the Government busses plying from Madurai to Kollam are forced to travel inside to reach the new bus stand, which is situated at the outskirts of the Municipality and again travel in the same route after boarding the passengers from Rajapalayam to reach the travelling route of Kollam and therefore, to avoid traffic congestion inside the Rajapalayam Town, after undertaking a detailed study and pursuant to the preparation of detailed project report by the technical experts for the proposed link road, administrative and financial sanction was issued. Since in the scheme road, several demolition has to be carried out and also the necessary width is not available, the link road is proposed at an outer area to the benefit of public at large without causing any maximum damages, as such sanction was accorded and based on which, a notification under Section 15(1) of the Act also was issued.



W.P.(MD)Nos.12215 and 18698 of 2023

12.The learned Additional Advocate General further submitted that no prior environmental clearance is required for the proposed link road, as the link road itself is only for 2 kms and it can no means be taken as a new highway. Clause 7(f) of the EIA Notification, 2006, only mandates for prior environmental clearance for a new State Highway and also for expansion of National or State highway more than 30 kms. By a subsequent amendment, even the want of prior environmental clearance for expansion of the State Highway more than 30 kms has been dispensed with and now only an environmental clearance for a new State Highway is required. The learned Additional Advocate General further contended that the proposed link road does not fall within the definition of Section 2(12) of the Act, as the proposed 2 km link road is only a facility extended for the public to have access between State Highway-SH-41 and the National Highway-NH-744. The learned Additional Advocate General further submitted that objections were considered by the State Government and pursuant to which, publication under Section 15(1) of the Act was issued on 13.02.2023 and after contemplating the procedures, an award has been passed and the amount has also been disbursed to around 60% of the land owners and since already there has been a delay caused due to the above two Writ Petitions, now the project, which has to be implemented at the cost of Rs.36 crores,

16/42



may require a revision and any further delay would be loss to the public
exchequer.

13.As far as obtaining of permission under Section 58 of the TCP Act, the learned Additional Advocate General contended that it is pre-mature at this stage and only after the process is completed and before the road is laid, necessary compliance will be definitely undertaken by the authorities concerned and therefore, sought for dismissal of these Writ Petitions.

14.Mr.K.Sivabalan, learned Counsel appearing for the Respondents 13 to 36, who are the land owners, whose lands have been acquired for the above project, submitted that the land owners have received the compensation and they do not have any grievance for the project being implemented, as it will be only in the interest of the residents and expressed their willingness for the project for the link road being implemented at the earliest.



W.P.(MD)Nos.12215 and 18698 of 2023

15. Heard the learned Counsels on either side and perused the materials available on record. Based on the submissions made by the rival parties and the issues raised in the Writ Petitions, the following points arise for consideration of this Court.

(a) Is the proposed link road project a “new state highway” requiring prior environmental clearance?

16. Rajapalayam is a largest Municipality in Virudhunagar District and there is an existing Tirumangalam-Kollam National Highway (NH-744), which passes through the Municipality and connects Madurai and interlinks all other parts of the State. There is also an existing State Highway-SH-41 (Rajapalayam-Sankarankovil-Tirunelveli), which runs through the Municipality linking all southern Districts, viz., Tirunelveli, Tuticorin and Kanyakumari.



W.P.(MD)Nos.12215 and 18698 of 2023

17.As Rajapalayam being a largest Municipality is already having huge traffic congestion, where the busses and all the vehicles have to travel through the Municipality, the State Government issued G.O.(Ms)No.171, Highways and Minor Ports (HS2) Department, dated 16.10.2018, for preparation of a detailed project report for the work of formation of link road between Rajapalayam-Sankarankovil-Tirunelveli (State Highway-SH-41) to Tirumangalam-Kollam (NH-744) in Virudhunagar District. Based on the report submitted by the technical experts, the Government issued G.O.(Ms)No.62, Highways and Minor Ports (HS2) Department, dated 02.05.2022 and accorded administrative and financial sanction for land acquisition for the work of the above project. Pursuant to the sanction accorded, notification in Form-B under Section 15(2) of the Act was issued in Roc.No.D1/3365/2020, dated 16.09.2022 and published in the daily newspapers on 29.09.2022 calling for objections in respect of the acquisition of lands for the formation of 2 km link road between State Highway-SH-41 and National Highway-NH-744. After receiving the objections, enquiry was conducted on 01.11.2022 and pursuant to which, orders were passed by the Commissioner of Land Administration, Chennai, under Section 15(3) of the Act on 09.02.2023 and pursuant to which, a notification under Section 15(1) of the Act was published in the 19/42



W.P.(MD)Nos.12215 and 18698 of 2023

Government Gazette No.65, dated 13.02.2023. The relevant portion of the publication is extracted hereunder:

“No.VI(1)/100(b-2)/2023.

The Government of Tamil Nadu having been satisfied that the lands specified in the Schedule below to be acquired for Highway purpose to wit to formation of Link Road between Rajapalayam-Sankaran Kovil-Tirunelveli Road (SH-41 Rajapalayam New Bus Stand) to Thirumangalam-Kollam Road (NH-744 Rajapalayam Government Hospital) in Kadambankulam and Pudhuppalayam villages Rajapalayam Taluk of Virudhunagar District and it having already been decided that the amount of compensation to be awarded for the lands are to be paid out of the funds controlled or managed by Chief Engineer (Projects), Highways Department, Guindy, Chennai. The following notice is issued under sub-section (1) of section 15 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002).

Notice

Under sub-section (1) of section 15 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), the Governor of Tamil Nadu hereby acquires the lands specified in the Schedule below measuring an Extent of 60706 Sq.mtrs to the same, a little more or less needed for Highways purpose to wit for formation of Link Road between Rajapalayam-Sankaran Kovil-Tirunelveli Road (SH-41 Rajapalayam New Bus Stand) to Thirumangalam-Kollam Road (NH-744 Rajapalayam Government Hospital) in Kadambankulam and Pudhuppalayam villages Rajapalayam Taluk of Virudhunagar District.”

18.The perusal of the notification issued, which is extracted herein above, the Government Orders and the publication would clearly reveal that the proposed project is only a 2 km link road between Rajapalayam-



Tirunelveli State Highway-SH-41 and the Tirumangalam-Kollam National Highway-NH-744. When there is already an existing State Highway running within the limits of the Municipality and also an existing National Highway running within the limits of the Municipality, the proposed project envisaged by the State Government for the purpose of providing a link road between the existing State Highway and National Highway for the facility and better computation of the public to avoid traffic congestion that too based on the feasibility study conducted and the report submitted by the technical experts, cannot be construed as a new State Highway.

19.For the purpose of a road to be termed as a “State Highway”, a new road has to be formed by a project to be implemented by the State Government and this road has to be declared as a Highway under Section 3 of the Act, which is extracted hereunder for ease reference:

“3.On the recommendation made by the State Highways Authority, the Government may, by notification, declare any road, way or land to be highway and classify it as any one of the following, namely:-

(i) a State Highway;

(ii) a major district road;



WEB COPY



W.P.(MD)Nos.12215 and 18698 of 2023

(iii) other district road; or

(iv) a village road:

20.The term “Highway” has also been defined under Section 2(12) of the Act, which is extracted hereunder for ease reference:

“(12) **“highway”** means any road, way or land which is declared to be a highway under section 3 and includes--

(a) all land appurtenant thereto, whether demarcated or not;

(b) the slope, berm, burrow pits, foot paths, pavement, whether surfaced or unsurfaced;

(e) all bridges, culverts, causeways, carriage ways or other structures built on or across such road or way;

(d) the foot-way attached to any road, public bridge or causeway;

(e) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, varanda or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private or property belonging to the Central Government or any State Government; and

(f) all fences, trees, posts and boundaries, hectometer and kilometer stones and other highway accessories and materials stacked on such road or public bridge or causeway,

but does not include a National Highway declared as such by or under the National Highways Act, 1956.



W.P.(MD)Nos.12215 and 18698 of 2023

21. Therefore, for a road to be a “Highway”, it has to come within the meaning of Section 2(12) of the Act and further on the recommendation of the Highway Authorities, a notification has to be issued by the State Government declaring the same as a State Highway. In the instant case, no new State Highway is formed, which has been recommended and declared by the State Government by notifying as a State Highway. Under such scenario, as observed and referred above, in view of the notification issued under Section 15(2) of the Act for acquiring the lands, where the intention is clearly declared that it is only for the formation of a link road between the existing State Highway-SH-41 and National Highway-NH-744, the proposed project of laying 2 km link road cannot be termed as a State Highway come within the meaning of Section 2(12) of the Act and therefore, we have no hesitation to hold that the proposed project is only an extension of a facility to meet the present day requirements considering the traffic congestion and therefore, the link road is not a “new State Highway”.

22. As far as the contention of the petitioners that prior environmental clearance has to be obtained from the Environmental Impact Assessment Authority before issuing any notification for the implementation of the



W.P.(MD)Nos.12215 and 18698 of 2023

project, it is useful to extract the relevant Clause-7(f) of EIA Notification, 2006, hereunder:

WEB COPY

7(f)	Highways	i)New National Highways; and ii)Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i)New State High ways and ii) Expansion of National/State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	General Condition shall apply.
------	----------	---	---	--------------------------------

23.The amended Clause-7(f) pursuant to the amendments, dated 01.12.2009 and 22.12.2014 is extracted hereunder for ease reference:



W.P.(MD)Nos.12215 and 18698 of 2023

7(f)	Highways	(i)New National Highways; and (ii)Expansion of National Highways greater than 100 km, involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignment or by-passes.	(i)All New State Highway Projects. (ii)State Highway expansion projects in hilly terrain (above 1,000m AMSL) and or ecologically sensitive areas.	General condition shall apply. Note:Highways include expressways
------	----------	--	--	--

24.It could be seen that under Category(4) of Clause-7(f), EIA Notification, 2006, there are two sub categories. In respect of first one, it pertains to the new State Highways and the second one, pertains to expansion of National Highway/State Highway greater than 30 km. In the amended Notification, in Clause-7(f), it could be seen that there are also two sub categories under Category(4), where, in respect of the first category, all new State Highways projects and in respect of second category, the State Highway expansion projects in hilly terrain. As such, in the EIA



W.P.(MD)Nos.12215 and 18698 of 2023

Notification, 2006, as it originally stood, only the new State Highway and also the expansion of State Highway beyond 30 km was required to obtain a prior environmental clearance and in view of the subsequent amendments, the prior environmental clearance for the expansion of the State Highway beyond 30 km has been exempted and now only the prior environmental clearance is required for the new State highway projects and the State Highway expansion projects in hilly terrain.

25.The present project, that is proposed to be implemented is only a 2 km link road between the already existing State Highway and the National Highway and definitely, falls even within the prescribed limit of 30 km, as contained in the original sub category-(ii) of category(4) under 7(f) of EIA Notification, 2006, which has also now been exempted and as of now, only a new State Highway and the expansion of State Highway in hilly terrain is required to obtain a prior environmental clearance.

26.As it has been held that the proposed 2 km link road project is not a new State Highway, the question of obtaining a prior environmental

26/42



W.P.(MD)Nos.12215 and 18698 of 2023

clearance for implementation of the project does not arise and since there is no need for obtaining prior environmental clearance, the notification issued under Section 15(1) of the Act, is not found to be flawed and accordingly, sustained.

(b)Whether the proposed link road project could be continued in view of the master plan being notified?

27.It is the contention of the petitioners that since Rajapalayam Municipality has been declared and brought under the planning area under Section 10 of the TCP Act, by the Government and master plan has been prepared and the Government has approved the master plan for the Rajapalayam Municipality under Section 28 of the TCP Act, vide G.O.Ms.No.21, Housing and Urban Development [UD4(2)] Department, 30.01.2024 and published in Government Gazette No.26, dated 30.01.2024, the proposed project cannot be implemented, as it does not form part of the roads provided under the master plan.



W.P.(MD)Nos.12215 and 18698 of 2023

WEB COPY

28. After coming into operation of the development plan in any area, any development that is sought to be carried out within the planning area has to be in consonance with the provisions of the Act. Sections 47 and 49 of the TCP Act are extracted hereunder:

“47. Use and development of land to be in conformity with development plan.-

After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government, or any local authority shall use or cause to be used, any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan.

49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-



W.P.(MD)Nos.12215 and 18698 of 2023

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area;

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same.

29. The above provisions make it clear that the State Government or the Central Government or any local authority is exempted from carrying on any development activity otherwise than in conformity with the development plan and only any other person other than the State Government or the Central Government or the local authority, who is intending to carry out any development within the planning area, has to obtain prior approval for making any development.

30. Section 47-A of TCP Act, relied on by the learned Senior Counsel for the petitioner, contending that a prior application has to be made and permission has to be obtained and further as per the proviso, if it is a wet



W.P.(MD)Nos.12215 and 18698 of 2023

land, prior concurrence of the District Collector is necessary, is not applicable to the development in a planning area. Section 47-A of the TCP Act is extracted hereunder:

“47-A. Development of land in an area other than planning area.-

(1) Any person intending to carry out any development on any land in an area other than planning area shall make an application in writing to the local authority for permission in such form and containing such particulars and accompany such documents as may be prescribed.

(2) The local authority shall before according permission under subsection (1), shall obtain the prior concurrence of the Director and shall also collect such fees at such rate as may be prescribed:

Provided that in the case of wet lands, the prior concurrence of the Collector of the District concerned is necessary.

(3) The Collector shall give his prior concurrence to the local authority under sub-section (2), upon fulfillment of such guidelines as may be prescribed.

(4) Where any development of land has been carried out,-

(a) without permission required under this section; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land has been duly revoked; or (d) in contravention of any permission which has been duly modified. the local authority shall exercise the powers of the appropriate planning authority under sections 56 and 57 with such modifications as may be necessary.



W.P.(MD)Nos.12215 and 18698 of 2023

31. As per Section 47-A of TCP Act, only if any person is intending to carry out any development on any land in an area other than the planning area, shall make an application in writing to the local authority. Since admittedly, the proposed project falls within the planning area, the application of Section 47-A of TCP Act will not arise to the facts of the present case.

32. In respect of any development undertaken on behalf of the State Government or the local authority in the planning area, the procedure is laid down under Section 58 of TCP Act, which is extracted hereunder:

58 Development undertaken on behalf of any State Government or Central Government or local authority.- (1) *When any department of any State Government or the Central Government or any local authority intends to carry out development of any land or building, the officer-in-charge thereof shall inform, in writing, the planning authority concerned the intention to do so, giving full particulars thereof, and accompanied by such plans and documents atleast thirty days before undertaking such development:*

Provided that in case where any local authority is the local planning authority under this Act, it shall inform the fact of any such proposed development to the regional planning authority concerned within whose jurisdiction such local authority is situated.

(2) *Where a planning authority concerned or the regional planning authority concerned, as the case may be, raised any objection to the proposed development on the ground that the development is not in conformity with the provisions of any development plan under*



WEB COPY



W.P.(MD)Nos.12215 and 18698 of 2023

preparation or for any other material consideration, the officer of the State Government, Central Government or any local authority, as the case may be shall-

(i) either make necessary modifications in the proposals for development to meet the objections raised by the planning authority concerned, or

(ii) submit the proposals for development together with the objections raised by the planning authority concerned to the Government for decision.

(3) The Government, on receipt of the proposal for development together with the objections of the planning authority concerned shall, in consultation with the Director, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as they consider necessary in the circumstances and the officer concerned shall be bound to make such modifications as proposed by the Government.”

33.As such, when the State Government or the local authority intends to carry out the development on any land, the Officer in-charge shall only inform in writing to the planning authority concerned and only if there is any objection from the planning authority, the same will be referred to the Government, which shall be approved in consultation with the Director. As submitted by the learned Additional Advocate General appearing for the State that it is premature at this stage and after the proceedings are completed, the authority concern would inform the local planning authority before carrying on the execution of the work. The development/proposed



W.P.(MD)Nos.12215 and 18698 of 2023

project carried out by the State Government is only for the betterment to facilitate the local authority and ease the traffic congestion. In fact, the very object of forming a planning area is to ensure that the development activities are carried out on a planned manner. Further the fact remains that already the scheme road to connect the two highways is provided in the master plan and only to facilitate the municipality and public, the proposed link road is to be laid beyond some distance at an outer area instead of the scheme road, based on the report of the technical experts. As such there is no restrictions for the State to continue with the proposed project of link road in view of the master plan being notified.

(c)Whether the implementation of the link road project could be allowed to be proceeded?

34.The State Government, after conducting the feasibility study and obtaining the project report, has accorded the administrative and financial sanction for the formation of link road, as early as on 02.05.2022, pursuant to which, notices were issued under Section 15(2) of the Act calling for

33/42



W.P.(MD)Nos.12215 and 18698 of 2023

objections from the land owners and after considering their objections, notification under Section 15(1) of the Act has also been published on 13.02.2023. The award enquiry has also been completed and the award has also been passed for a total award amount of Rs.3,28,28,836/- in S.No.63 of Puthupalayam Village and Rs.64,04,302/- in S.No.10 of Kadampankulam Village. Out of the same, around 40% of the award amount has been settled and while the project was proceeded further, the same has been stalled in view of the filing of the above two Writ Petitions.

35.The land owners, who got themselves impleaded in the above Writ Petitions submitted before this Court that they have received the award amount and they do not have any objection for the proposed link road to be implemented, in fact, which would only be for the betterment of the public.

36.As submitted by the learned Additional Advocate General, it could be seen that if the scheme road is implemented, several demolition has to be carried out and further, the issue of traffic congestion will not ease and only by taking those aspects into consideration, the proposed link road is to be

34/42



formed at an outer area to avoid traffic congestion, which is based on the report submitted by the technical experts. When the project is implemented based on the opinion of the technical experts, this Court cannot sit in appeal over the opinion of the experts, as we are not experts to arrive at a conclusion and it is for the Government to provide the facility and implement the project by considering the interest of the public at large.

37. Reliance was made to the judgment of the Hon'ble Supreme Court in ***Hanuman Laxman Aroskar vs Union of India*** reported in **(2019) 15 SCC 401**, wherein, it is observed as follows:

“56. The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment : there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development.”



W.P.(MD)Nos.12215 and 18698 of 2023

38. In fact, in EIA Notification, 2006, earlier it was mandated for obtainment of environmental clearance for any expansion beyond 30 km. Later, in view of the present day requirements, the need for obtaining prior environmental clearance beyond 30 km has also been exempted for the expansion work carried out and only restricted to new highway project, which shows that the balance has been maintained by protecting environment and also development.

39. From the plan submitted, it could also be seen that the proposed link road is not disturbing any water body and in fact, the link road is implemented by acquiring lands by adopting the procedures, as contemplated under the Act and in fact, major portion of the award amount has also been paid and the land owners have also expressed their willingness to go ahead with the project. The contention of the petitioners that since already a road proposed to be land in the master plan and if that is implemented, it will solve the purpose and the present project envisaged by the Government may not be fruitful, cannot be sustained for the simple reason that only after conducting a detailed study and obtaining the opinion of the experts, the Government had arrived at a conclusion to go ahead with

36/42



the proposed link road at an outer area, so that there can be a better connectivity without affecting the existing infrastructure, which will be more beneficial to the public.

40. Further, when similar issue in respect of implementation of a road project came up for consideration before another Division Bench of Court in the case of ***Pennyquick Irupoga Paasanam Vivasayigal Neer Aatharangal Pathukapu Sangam vs the Authorised Officer and others*** in **W.P. (MD)Nos.14750 of 2018 and 9834 of 2019**, dated 30.06.2020, this Court has held as follows:

“18 In our opinion, when the petitioners have not attributed any acts of mala fides nor have they urged that the project violates the provisions of the NH Act, it is not open for this Court to rely upon the judgment in M.C. Mehta (supra) and hold that environmental clearance is necessary for this project. At this juncture, apropos it is to extract paragraph no.10 of the judgment of the Supreme Court in Ramniklal N. Bhutta and another vs. State of Maharashtra and others:

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as Asian tigers , e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for



W.P.(MD)Nos.12215 and 18698 of 2023

sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of noncompliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

41. In the above case, in fact the issue of getting prior environmental clearance and the alternative way was also proposed, but however the same



W.P.(MD)Nos.12215 and 18698 of 2023

was negatived. The appeal preferred before the Hon'ble Supreme Court as against the above judgment in S.L.P(C)Nos.5483-5484 of 2021, was also dismissed, by order dated 31.10.2022.

42.The other judgments relied upon by the learned Counsels for the petitioners are not applicable to the facts of the case, as they pertain to a new Highway for a very long distance.

43.Since award has been passed and almost major part of the award amount has been disbursed, the project, which was initiated in the year 2018 and approved as early as on 02.05.2022, has now been stalled in view of the above litigations. Any further delay would definitely be adverse to the interest of the public and result in increase of the project cost and the respondents can go ahead and implement the link road project.



W.P.(MD)Nos.12215 and 18698 of 2023

44.In view of the above, the Writ Petitions fail and are accordingly

dismissed. However, there shall be no order as to costs. Consequently,

connected Miscellaneous Petitions are closed.

[R.S.K., J]

&

[G.A.M., J]

30.04.2024

Internet :Yes/No

Index :Yes/No

NCC :Yes/No

cmr

To

1.The Principal Secretary,
The State of Tamil Nadu
Highways and Minor Ports (HS2) Department,
State of Tamil Nadu,
Fort St.George, Chennai – 600 009.

2.The Secretary to the Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai-600009.

3.The Commissioner,
Commissionerate of Land Administration,
2nd Floor, Ezhilagam,
Chepauk, Chennai – 600 005.

4.The Director General,
Highways Department,
Integrated Chief Engineers Office,
76 Sardar Patel Road,
Guindy, Chennai – 600 025.

40/42



W.P.(MD)Nos.12215 and 18698 of 2023

5.The Chief Engineer (Highway Project),
Integrated Chief Engineers Office,
76 Sardar Patel Road,
Guindy, Chennai – 600 025.

6.The District Collector,
Office of the District Collector,
Virudhunagar District- 626 002.

7.The Divisional Engineer (Highways Project),
Office of the Divisional Engineer (Highways Project),
Perumalpuram, Tirunelveli – 627 007.

8.The District Revenue Officer,
Office of the District Revenue Officer,
Virudhunagar District,
Collectorate, Sattur Road,
Virudhunagar District- 625 002.

9.The Special District Revenue Officer
/Land Acquisition Officer,
Office of the Special District Revenue Officer,
Tamil Nadu Road Sector Project -II,
Corporation over water tank complex,
Dindigul Road (KPN Parcel opposite),
Tiruchirappalli.

10.The Commissioner,
Office of the Commissioner,
Rajapalayam Municipality,
Virudhunagar District.

11.The Tahsildar,
Office of the Tahsildar,
Rajapalayam Taluk, Virudhunagar District.



WEB COPY



W.P.(MD)Nos.12215 and 18698 of 2023

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Common Order made in
W.P(MD)Nos.12215 and 18698 of 2023

30.04.2024